

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

HARLAN M. RICE,)	
)	DOCKET NO.: IT-1997-2
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	FOR JUDICIAL REVIEW

The above-entitled appeal was heard telephonically on the 18th day of June, 1997, in the City of Helena, Montana, pursuant to the order of the State Tax Appeal Board of the State of Montana, (the Board). The notice of said hearing was duly given as required by law setting the cause for hearing. The taxpayer, representing himself telephonically in Forsyth, Montana, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by David Olsen, compliance supervisor, Income and Miscellaneous Tax Division, presented testimony in opposition thereto. At this time and place, testimony was presented, exhibits were received and the Board then took the cause under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it for its consideration by all parties in the Docket, and being well and fully advised in the premises, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral

and documentary.

2. The issue in this appeal is one of Montana residency for tax years 1988 through 1994. The taxpayer contends that he was not a resident of Montana during the tax years at issue and, therefore, has no filing obligation with the Montana Income Tax Division.

3. The Board has jurisdiction over this matter in accordance with Section 15-2-302, MCA.

TAXPAYER'S CONTENTIONS

Mr. Rice testified that he lives in and visits his hometown of Forsyth, and other areas of Montana, only approximately three months per year. When in Montana, he primarily resides in a log cabin on state land near Forsyth. He receives CRP income from the United States Department of Agriculture for a portion of that acreage, as well as dividend income from various utility companies and Plum Creek Lumber Company. He testified that he travels approximately three months per year and rents a dwelling in Arizona for the remaining six months.

He contends that he has no filing obligation with the State of Montana because he does not earn his income in Montana and is not physically present in Montana for the majority of the year. He retired from business in Montana in 1959 and began traveling to California, Arizona and Texas for a portion of the year in 1962. He has continued this practice up to the present time. He maintained that he does not have what he considers to be a permanent residence. He testified that he considers his dividend earnings to be his "retirement income" which are not taxable in Montana.

Mr. Rice had filed part-year resident Montana returns for tax years 1986 and 1987, but has not filed any state returns since that time.

DOR CONTENTIONS

Mr. Olsen testified that the DOR receives annual reports from the Internal Revenue

Service, referred to as IRMF reports (individual return master file reports). These reports show income of individuals that are reported to the federal government by information agents. The reported income items include wages, dividends, rents, etc., (1099 forms, W2 forms, etc.)

The IRMF reports pertinent to the taxpayer, for tax years 1988, 1989, 1990, 1991 and 1992, were duly received by the DOR. On the basis of the information contained in these reports, the DOR became interested as to why Mr. Rice was not filing income tax returns with the DOR for 1988-1994. During all of the tax years at issue, Mr. Rice received income above the minimum filing requirement and would be required to file as a Montana resident.

The DOR made the determination that Mr. Rice was domiciled in Montana during the tax years at issue for the following reasons:

Throughout all of these years, Mr. Rice received the majority of his 1099 forms at his Forsyth address.

The DOR sought, and received, a copy of Mr. Rice's voter registration card from the Rosebud County Clerk and Recorder. This document showed Mr. Rice to be a registered voter in Rosebud County, although the Clerk and Recorder stated that the last time Mr. Rice voted was in November of 1992, and that he had been placed in an inactive status in Rosebud County and the State of Montana because he had not voted in 1994 and 1996.

Mr. Rice has filed his federal tax returns using a Forsyth address for tax years 1986 through 1995.

Mr. Rice has had a valid Montana driver's license since at least 1982. The driver's license lists his Forsyth address and has an expiration date of 1998.

Mr. Olsen submitted copies of pertinent and applicable Montana statute and administrative law in support of its residency determination and its assessment of taxes, penalties and interest owing for the tax years at issue (Sections 1-1-215, 15-30-101, 15-30-145, 15-30-321 and 15-30-145, MCA, and ARM 42.15.102. The assessments due and owing, including penalty and interest, total \$3,484.45 for tax years 1988 through 1994. The assessment was made on the basis of

adjusted gross income information obtained from IRS documents.

BOARD'S DISCUSSION

The Board concludes that Mr. Rice is a resident of Montana for income tax purposes.

During the tax years at issue, Mr. Rice listed his Montana address on federal income tax returns, the majority of his 1099 forms were mailed to his Montana address, Mr. Rice is a registered voter in Montana, although currently in an inactive status, and he possesses a valid Montana driver's license.

The above circumstances, taken as a whole, indicate to this Board that Mr. Rice has not severed his residency ties to Montana, neither by act or intent, or both, for Montana income tax purposes.

The mere fact that an individual has cancelled checks showing that he spent money in another state, or rents a house in another state, does not mean that he has taken the actions necessary to sever residency. The explanation for the fact that Mr. Rice ceased filing individual income tax returns in Montana was not given. The question remains as to why Mr. Rice, when he began his travels from Montana in 1962, continued to file Montana individual income tax returns until 1987, and ceased filing in 1988. What caused him to believe that he had taken steps to sever his Montana residency in 1988; behaviors that he had not demonstrated from 1962 to 1987? Mr. Rice may believe that he has no permanent residence, but he has not taken the action necessary to demonstrate that he is no longer a Montana resident for individual income tax purposes.

CONCLUSIONS OF LAW

1. A person's residence is the place where he remains when not called elsewhere for labor or other special or temporary purposes, and to which he returns in seasons of repose. There can only be one residence. A residence cannot be lost until another is gained. (Section 1-1-215 (1),

MCA).

2. Every person has a place of domicile, but only one. A domicile, once established, continues until abandoned and a new one acquired. A change in domicile is accomplished only by a union of act and intent. . . (ARM 42.15.102 (1)).

3. If a taxpayer does not file a return as requested, the Department may estimate the taxable income of the taxpayer from any information in its possession, and assess taxes, penalties, and interest based upon the estimate. (Section 15-30-145 (2), MCA).

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the taxes, penalties, and interest assessed by the Department of Revenue are properly due and owing.

Dated this 25th of June, 1997.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

PATRICK E. McKELVEY, Chairman

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of June, 1997, a true and correct copy of the foregoing Order has been served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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Donna Westerbur,
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